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C O N F I D E N T I A L SECTION 01 OF 03 ABUJA 000491

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SUBJECT: ATIKU CONFIDENT COURTS WILL PUT HIM ON BALLOT

REF: A. 06 ABUJA 3247

[1](#)B. ABUJA 460

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Classified By: A/Political Counselor Heather Merritt for reasons 1.4 (B and D)

[1](#)1. (C) SUMMARY: Two important court victories -- including a decision on March 7 in which the Federal High Court in Abuja ruled that INEC does not have the right to disqualify candidates -- have boosted Vice-President Atiku Abubakar's chances of being on the ballot in April. Although a number of legal issues remain, the consistent rulings by the Nigerian judiciary suggest that political rather than legal issues pose the greatest obstacles to Atiku's candidacy. A pending Senate investigation into allegations of corruption related to the Petroleum Technology Development Fund (PTDF), statements by INEC Chairman Maurice Iwu that Atiku is still ineligible and INEC's appeal of the March 7 ruling indicate that Atiku's candidacy is far from certain. With INEC expected to make its list of eligible presidential candidates public on March 15, time is running out. Atiku's strategy is to continue to rely on the courts to get his name on the ballot and then hope that on election day that Nigerian voters equate his candidacy with his successful efforts to best President Obasanjo by just getting his name on the ballot. END SUMMARY

RELYING ON THE COURTS

[1](#)2. (C) Shortly before deciding to jump parties to accept the nomination of the Action Congress (AC), Vice President Atiku devised a strategy which centered on using the courts to certify his eligibility (ref A). Atiku established a formidable legal team which has so far won the majority of the cases challenging his eligibility. In the first major case, the Court ruled that the President cannot dismiss his Vice President. The second major decision, issued on March 7, concluded that INEC does not have power to disqualify candidates.

[1](#)3. (U) Another key case involved Otumba Fashawe, Atiku's co-defendant in the indictment by the Administrative Panel of Inquiry over their involvement in the PTDF scandal. Atiku's indictment by the Panel has been a key pillar in the

government's legal argument that he is ineligible. In the far reaching decision in the legal case filed by Fashawe, the Lagos High Court ruled on December 1, 2006 that the indictment was null and void because the process was a violation of the constitutional protection of a fair hearing. The 37-page decision, written by Judge Inumidun Akande, concluded that the EFCC did not have the right to submit the report to the presidential panel, and that the panel itself, in not notifying the defendants of the charges, nor allowing them to defend themselves before the panel violated section 36 (1) of the constitution. Fashawe was released from detention and charges stemming from the indictment dropped. Atiku claims that the ruling, which found the process to be unconstitutional, clearly applies to him, even though he was not officially a party to Fashawe's suit.

¶4. (C) In a conversation with Poloff, one of Atiku's closest advisors, Usman Bugaje, said that "legally we are on the right track. We believe that the courts will give us a fair hearing. The first ruling was unanimous and delivered an important political message," Bugaje theorized. Bugaje believes that the judiciary has been sending clear signals and that INEC will be forced to allow Atiku on the ballot. He also noted that the legal skirmishes are taking away valuable time from the VP's ability to finance and conduct a campaign and could have an impact on INEC's ability to organize the elections on schedule.

¶5. (C) INEC Chairman Maurice Iwu has made numerous public statements regarding Atiku's status as a candidate. In an interview on VOA on March 8, Iwu said the March 7 court ruling was a victory for INEC because it gives it a right to verify candidates' qualifying documents. An INEC press release said "... the truth of the matter is that the recent ruling of the Federal High Court in Abuja vindicated the Commission as having the right to verify the documents and submissions of aspirants. Indeed the court ruled that the

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commission can, in law, screen candidates." Iwu told a Chiefs of Mission gathering on March 8 that Atiku will not be on the ballot because of the constitutional prohibition against anyone who has been indicted. He explained that it is, therefore, not INEC which has disqualified the Vice President, but the constitution.

¶6. (C) Nonetheless, INEC on March 12 filed an appeal, challenging, in part, the Federal High Court's core finding that INEC does not have the power to disqualify candidates. The legal questions are crucial because INEC plans to announce its "approved" list of candidates on March 15, and it must begin printing 240 million ballots. Bugaje told Poloff that if INEC follows through with its threat and Atiku's name is not on the final list of cleared presidential candidates, he will seek an immediate injunction preventing printing of the ballots. Another possible legal tactic was to seek a contempt of court finding against Iwu, which might also result in a delay in printing the ballots.

DOUBTS ABOUT INEC'S ELECTION PREPARATION

¶7. (C) The VP believes that INEC is logistically ill-prepared and that the lack of preparation could be a ploy to delay the elections, Bugaje said. He said the VP was concerned about Iwu's integrity, but that on at least one occasion INEC had shown they could do the right thing. Iwu, Bugaje said, had acted honorably in wresting control of the ballot printing contract from a Villa insider, and steered it instead to the Nigerian Mint to print the ballots. However, Bugaje said it was not clear that the Mint could handle the job of printing an estimated 240 million ballots before the elections (Note: INEC has raised its estimate to 400 million ballots.) Bugaje called on the international community to pay close attention to the issue and, if possible, help print

the ballots (ref B).

¶18. (C) Within INEC, Bugaje said, the commissioners are divided over Atiku's candidacy. Bugaje claimed that a straw poll revealed that nine out of 13 members saw no legal barriers to Atiku's candidacy. The vote left a deep rift among the commissioners and Leadership newspaper subsequently reported that Iwu has asked for the resignations of all the commissioners who see no legal barriers to Atiku's candidacy.

HOPING FOR A BOOST IN THE BANK AND A BOUNCE AT POLLS

¶19. (C) The VP is hoping for a popular backlash against the President which will benefit his candidacy. The PDP, he contended, is extremely unpopular in many states and by fighting the good fight, the VP is gaining credibility as someone able to defend his turf. "All the President's efforts to sideline the VP are making him more popular," Bugaje claimed. "The political threats and intimidation are seen as victimization."

¶10. (C) The much touted alliance between the AC and the ANPP has died a slow death Bugaje said, and there was little hope that the two parties would agree on a joint candidate. A truce of sorts was agreed to during a meeting between Atiku and Buhari while in Fantua last month, Bugaje said. He described the ANPP as being in disarray.

¶11. (C) Bugaje also indicated that the Atiku campaign was up until now relying on the VP's personal resources and donations were only coming in "small bits." Donors, Bugaje said, were reluctant to invest under the current circumstances. "But we are hoping that changes when Atiku gets on the ballot," Bugaje concluded.

¶12. (C) COMMENT: INEC Chairman Maurice Iwu has clearly signaled that he plans to leave Atiku's name off the list of eligible presidential candidates on March 15. In the absence of a Supreme Court ruling to the contrary, Iwu argues that Atiku's indictment leaves him constitutionally ineligible. Atiku, on the other hand points to numerous rulings in lower courts--the Lagos State High Court and the Abuja Court of Appeals--as legal precedents which support his eligibility. He has told us that he plans to use the Courts to ensure his

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name gets on the ballot, and that he will seek an injunction if Iwu does not include his name on the March 15 list. Atiku's strategy of seeking an injunction is intended to force the Nigerian Supreme Court to rule on whether Atiku can or cannot be a presidential candidate. With time running out before the elections, it is unclear whether the Nigerian Supreme Court, if and when asked, will weigh in on the issue in a timely and definitive manner. We will follow the issue closely.
FUREY